

BEFORE the
UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Thayer, Iowa Post Office
Thayer, Iowa

Docket No. A2011-37

REPLY COMMENTS OF THE PUBLIC REPRESENTATIVE

October 7, 2011

I. INTRODUCTION AND BACKGROUND

By letter postmarked July 20, 2011, the Commission received a Petition to review the Postal Service's determination to close the Thayer, Iowa Post Office.¹ On August 2, 2011, the Postal Regulatory Commission (Commission) docketed the Petition, instituted the current review proceedings, appointed a Public Representative, and established a procedural schedule.² On August 15, 2011, the Postal Service filed an electronic version of the Administrative Record (AR) concerning its "Final Determination to Close the Thayer, IA Post Office and Establish Service by Rural Route Service" dated June 16, 2011, Postal Service Docket Number 1384502-50254.³ The Postal Service

¹ Letter filed by Mr. Mike Tonelli of Thayer, Iowa. (Petition).

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, August 2, 2011 (Order No. 788).

³ United States Postal Service Notice of Filing, August 15, 2011 (AR). The filing includes 49 items up to and including the cover sheets of the Final Determination (FD) with circular date stamps recording its removal from posting. AR Item No. 49.

filed comments supporting the Final Determination to close the Thayer Post Office on September 22, 2011.⁴

II. STATEMENT OF FACTS

The Thayer Post Office, Thayer, Iowa 50254, is located in Union County Iowa. It is an EAS Level-53 post office. Its total customers rent 16 Post Office Boxes. AR, Item No. 1. There are no permit mailers or postage meter customers. AR Item No. 15. There is no carrier service. AR Item No. 8, 18, FD-AR Item No. 47 at 2. The post office is not suspended and is currently active. AR Item Nos. 5, 6.

Thayer is an incorporated community comprised of retired people, farmers/ranchers, commuters or workers in local businesses. FD-AR Item No. 47 at 4. There are two businesses and one church located in the service area. AR Item No. 18. Minimal growth in the area is anticipated. Proposal to Close (Proposal), AR Item No. 33 at 3.

Delivery and retail service will be provided by the Afton Post Office with a rural route delivering to 17 additional mail boxes and retail window service. AR Item No. 17, FD-AR Item No. 47 at 2. Upon closing, the proposed administrative post office will be located 9 miles from the Thayer Post Office at the Afton, Iowa Post Office. The Murray Post Office in Iowa is located 7 miles from the Thayer Post Office. *Id.*

The request for a discontinuance study dated January 7, 2011 was based on minimal workload, revenue, more operational efficiency, and the ability of the Postal Service to provide effective and regular service by alternate means. *Id.* Thayer's postmaster vacancy has existed since a retirement on August 3, 1993. AR Item No. 1. A temporary officer-in-charge (OIC) has been installed to operate the office. Postal Service Comments at 3-4. The non-career postmaster relief (PMR) will be terminated

⁴ United States Postal Service Comments Regarding Appeal, September 22, 2011 (Comments). The Postal Service's Comments correctly point out that a letter received at the Commission on August 31, 2011 and docketed in this proceeding on September 1, 2011 is from a patron whose address is Thayer, Indiana and therefore not material to this appeal. Comments at 5.

or reassigned. AR Item No. 15 at 1. The PMR “may be separated from the Postal Service.” FD-AR Item No. 47 at 5. No other employees will be affected. *Id.*

Window service at the Thayer Post Office is provided Monday through Friday from 9:00 a.m. to 1:30 p.m. and on Saturdays from 10:00 a.m. to 11:30 a.m. Lobby hours are Monday through Friday from 9:00 a.m. to 1:30 p.m. and on Saturdays from 10:00 a.m. to 11:30 a.m. AR Item No. 15; Proposal Item No. 33 at 2; FD-AR Item No. 47 at 2. Retail window revenue averaged 2.3 transactions for a two week period in January, 2011, accounting for an average of 2.1 minutes of retail work daily. AR Item No. 10. Revenue was \$5,973 (16 revenue units) in FY 2008, \$5,203 (14 revenue units) in FY 2009 and \$4,810 (13 revenue units) in FY 2019. AR Item No. 33 at 2. The facility is not accessible to persons with disabilities. The lease of \$2400 per annum will expire on September 30, 2012 and has no termination clause. AR Item No. 18.

After closing of the Thayer Post Office, the Afton Post Office will continue to provide window service. Currently, the Afton Post Office hours are Monday through Friday 8:30 a.m. to 4:30 p.m. and on Saturday 8:30 a.m. to 9:30 a.m. AR Item No. 18; FD-Item No. 47 at 2. The Afton Post Office lobby is accessible 24 hours per day Monday through Saturday. AR Item No. 18 at 1. The Post Office Box fees are the same for each post office. Current no-fee box holders will be required to pay a fee if box service is continued. AR Item No. 15 at 2; AR Item No. 21 at 1. There are 104 Post Office Boxes available at the Afton Post Office. AR Item No. 18 at 1.

The Murray Post Office also provides retail window service. FD-AR Item 47 at 2. Window service is available Monday through Friday from 8:30 a.m. to 3:45 p.m. and Saturday from 8:30 a.m. to 10:00 a.m. The lobby is accessible 24 hours per day Monday through Friday and on Saturday from 12 a.m. through 3 p.m. AR Item 18 at 1. There are 148 Post Office Boxes available at the Murray Post Office. FD-AR Item No. 47 at 2.

A total of 20 questionnaires dated January 27, 2011 with a cover letter were distributed to customers with a return envelope indicating the plan to close the Thayer Post Office and to provide rural route service with roadside mailboxes installed by the

customer. The letter explained a rationale for the closing. The community name and ZIP Code will continue to be used. AR Item Nos. 21, 23. A carrier route address will be assigned. AR Item No. 33 at 3; FD-AR Item No. 47 at 3. Five questionnaires were returned. *Id.* at 23. A community meeting was held on February 9, 2011 and 7 customers were in attendance together with 4 Postal Service representatives. AR Item No. 24

On March 15, 2011 the Proposal to close the Thayer Post Office with a separate invitation for comments on the proposal was posted in the Thayer Post Office for the required 60 days and removed on May 16, 2011. AR Item No.33; AR Item No. 36 at 1, 3. Date stamps indicate the "Invitation for Comments on the Proposal to CLOSE" was posted at the Afton Post Office on March 23, 2011 and removed May 23, 2011. AR Item Nos. 36 at 2, 5. On the other hand, the Proposal in the record contains a date stamp indicating removal on May 23, 2011, but there does not appear to be a circular date stamp for the posting, but a posting date of March 15, 2011 is printed on the Proposal. AR Item No. 36 at 2. No comments were received. AR Item No. 44 at 1.

The Final Decision by the Vice President of Delivery and Post Office Operations to close the Thayer Post Office was posted in the Thayer, Afton and Murray Post Offices on June 20, 2011 and removed July 22, 2011. AR Item No. 49 at 1-3. The decision was based on: (1) the postmaster vacancy; (2) a minimal workload and low office revenue; (3) the delivery and retail options (including the convenience of rural delivery and retail service) from the Afton Post Office and retail service from the Murray Post Office, (4) very little recent growth in the area; and (5) estimated annual savings to the Postal Service of approximately \$21,559. In the Proposal and Final Determination, the Postal Service considered and responded to various concerns expressed by postal customers. AR Item No. 33; FD-AR Item No. 47 at 2-5.

Additional advantages of the Final Determination to close include customers opting for carrier service do not need to travel to the post office and have 24-hour access to delivered mail. CBUs can offer the security of individually locked mail compartments. Customers opting for carrier service will not have to pay box rental

fees. Disadvantages are the loss of a postmaster in the community, the inconvenience of meeting a carrier for retail service, and the change in mailing address although the town and the ZIP Code will continue to be used. AR Item No. 33 at 3; FD-AR Item No. 47 at 3.

III. POSITIONS OF THE PARTIES

A. The Petitioner

Petitioner did not file either a Petitioner's Form 61 or an initial brief or comments. In the absence of those filings, Petitioner's view is limited to the claim that closing the Thayer Post Office will mean a "big inconvenience" for Petitioner and others. Petitioner requests the Commission to consider keeping open the Thayer Post Office.

Without further explanation from the Petitioner, together with the Postal Service's review of the effects of the closing on the community and its plan to provide rural carrier delivery service, the Public Representative cannot determine whether Petitioner's objection could demonstrate the Final Decision is contrary unlawful. Inconvenience to customers, alone, does not render a decision to close a post office contrary to law.

B. The Postal Service

The Postal Service argues that it has (1) followed the proper procedures; (2) consistent with the mandate of 39 U.S.C. § 404(d)(2)(A), considered the effect of the closing on the Thayer community, the economic savings of the closing, the effect on postal employees and other factors; and (3) determined the advantages outweigh the disadvantages and effective and regular service will continue to be provided Thayer customers. Comments at 9-10.

IV. STANDARD OF REVIEW AND APPLICABLE LAW

A. Standard of Review

The PAEA delegates to the Commission the authority to review post office closings pursuant to 39 U.S.C. §404(d)(5). That section requires the Commission to review the Postal Service's determination to close a post office on the basis of the record that was before the Postal Service. The Commission shall set aside any determination, findings, and conclusions found to be – (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence on the record.

The Commission may affirm the Postal Service's determination or order the entire matter returned to the Postal Service for further consideration, but it may not modify the Postal Service's determination.⁵

B. The Law Governing Postal Service Determinations

Prior to making a determination to close or consolidate a post office, 39 U.S.C. §404(d)(1) requires that the Postal Service shall provide adequate notice of its intention at least 60 days prior to the proposed date of such action to persons served by such post office to insure they have an opportunity to present their views.

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. §404(d)(2) to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's

⁵ Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal. the petitioner in this proceeding did not request suspension of the closure of the Thayer Post Office.

provision of “a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;” (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. §404(d)(2)(A). The Postal Service is also precluded from considering compliance with provisions of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.* See 39 U.S.C. §404(d)(2)(B).

In addition, the Postal Service’s final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. §404(d)(3). The Postal Service is prohibited from taking any action to close a post office until 60 days after its final determination is made available to persons served by such post office. 39 U.S.C. §404(d)(4).

The Postal Service also has regulations prescribing its requirements for closing post offices. 39 CFR 241.3.

V. ADEQUACY OF THE POSTAL SERVICE’S FINAL DETERMINATION

After careful review of the Postal Service’s Final Determination, the materials in the Administrative Record, the contention presented in the Petition, and the Postal Service Comments, the Public Representative believes the Postal Service appears to have adequately considered, and has met, the requirements of section 404(d)(2)(A) with regard to: (1) the effect of the closing on the community served, and; (2) whether the closing is consistent with the Postal Service’s provision of “a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining.”

VI. PROCEDURAL QUESTIONS

The Public Representative's review indicates that there are questions as to whether the Postal Service has complied with the law and its own rules regarding the procedural requirements related to notices and postings.

A. Required Notices

The Postal Service's rules require posting of Proposals at "each affected post office." 39 CFR 241.3(d)(1). The Afton Post Office is clearly affected as it will be the administrative office of the Thayer delivery area and rural deliveries will emanate from that post office. As noted above, circular date stamps show the "Invitation for Comments on the Proposal to CLOSE" was posted at the Afton Post Office on March 23, 2011 and removed May 23, 2011. AR Item Nos. 36 at 2, 5. The Proposal in the record contains a circular date stamp indicating removal on May 23, 2011, but there does not appear to be a circular date stamp for the posting. The cover of the Proposal contains a printed date for posting of March 15, 2011. AR Item No. 36 at 2. The Postal Service's rules require the Proposal to be posted for comment for 60 days. 39 CFR 241.3(d)(1). The record does not affirmatively demonstrate that requirement was met at the Afton Post Office.⁶

As to the second procedural issue, the Final Determination was posted at the Murray Post Office, FD-AR Item No. 49 at 3, but the record does not indicate that the Proposal was posted at the Murray Post Office. The Afton Post Office will serve as the administrative unit 9 miles away, but the Murray Post Office is the nearest postal facility to Thayer, 7 miles away.

The question of compliance here turns on whether the Murray Post Office will be affected by the closing. Under the Postal Service's procedural rules in effect for this proceeding, the Proposal is to be posted "in each affected post office." 39 CFR 241.3(d)(1). This rule has recently been modified and its application clarified although the new rules are not applicable to this closing process. Under the new Postal Service

⁶ The Postal Service's comments claim the Proposal was posted at the Afton Post Office but does not address this question. Postal Service Comments at 5.

rules, the Proposal must be posted prominently at any retail facility “likely to serve a significant number of customers of the USPS-operated retail facility under study.” 39 CFR 241.3(d)(1)(iii).⁷ It is not clear whether a significant number of customers will be served by the Murray Post Office. Because the distances to the Afton Post Office and the Murray Post Office are similar (AR Item No. 1), and because of the very small number of current customers at the Thayer Post Office (16), the Public Representative does not believe the Murray Post Office is likely to service a significant number of customers and is not an “affected” post office for purposes of the requirement to post the Proposal at affected post offices. Therefore, the apparent failure to post the Proposal at the Murray Post Office is probably not a critical procedural error in this case. However, a contrary interpretation of the Postal Service’s rule would not be unreasonable. The Postal Service has not addressed the issue here.

B. Additional Issues

In addition, there are some minor discrepancies in the notices to customers that should be corrected and clarified in the future. The January letter distributed to postal customers does not indicate customers would have the option of declining rural carrier service, leaving the impression a mailbox must be installed. AR Item No. 21. The Proposal and the final Decision both indicate that customers will have the option of carrier delivery.⁸ The initial notice with the questionnaires should have contained this information. Apparently, customers did not have this information prior to the community meeting and, as far as can be determined from the record, was not conveyed to the community until the Proposal was posted. The summary of the Postal Service responses to concerns of the community at the community meeting discusses the types

⁷ See 76 Fed. Reg. 41423, July 14, 2011.

⁸ Potential customers presumably can forego installing a mailbox to avoid delivery, but that option is not mentioned in the initial January 27, 2011 letter distributed with the questionnaire. Some customers may believe they are subject to penalty if they do not expend the funds to install an unwanted mailbox. AR Item No. 21.

of mailboxes required and their location, but it does not suggest that customers were informed they had the option to maintain their deliveries through a Post Office Box at another post office. AR Item No. 25.

There is another deficiency in the analysis which should be corrected in the future that suggests the Postal Service will not be providing the maximum degree of regular postal services in small towns. Although the impact on the immediate community is analyzed, there is no attempt to consider or to alleviate the impact of the closing on the public in general. Historically, every town, particularly an incorporated town, had its own post office where travelers passing through could be assured of a location to do business with the post office or at least to mail a letter. This analysis does not indicate whether any consideration has been given to maintaining a collection box available to the general public after the closing of the Thayer Post Office. It must be assumed there will not be such a collection box. Absent the availability of a collection box at the location of a closed post office in an incorporated town, the impact on the general public of the Postal Service's shrinking footprint throughout the nation will be magnified.

VII. The Decision Analysis Required by 39 U.S.C. §404(d)(2)(A) is Deficient and Contrary to Law

As to other requirements of section 404(d)(2)(A), the Public Representative concludes that the Postal Service has clearly not performed in accordance with the law. The Postal Service has not adequately taken into account, (1) the effect on the Postal Service employee at the Thayer office, or (2) the economic savings to the Postal Service due to the closing. Given the Postal Service's failure to take adequately these matters into account in a meaningful manner, the Final Determination does not meet the requirements of subsections 404(d)(2)(A)(ii) and (iv).

Consideration of a subject matter required by the law must be more than cursory, and it must be meaningful and rational and not obviously incorrect or inaccurate. Otherwise the statutory terms would be purposeless and of no effect. If only lip service

is paid to the issue, there can be no lawful consideration. The cursory nature of the Postal Service's treatment of two matters essential to the review process which are, in this case, inter-related leads to the conclusion that the Postal Service's Final Decision is not supported in important respects by substantial evidence and is therefore arbitrary and capricious and not in accordance with law.

Initially, the Post Office Survey Sheet asked the question, "Which career and noncareer employees will be affected and what accommodations will be made for them?" The response was, "PMR to be reassigned or terminated." AR Item No. 15 at 1, # 7. Subsequently, an equally ambiguous statement is included in the Proposal and the Final Determination that the "non-career postmaster relief (PMR) *may* be separated." (Emphasis supplied.) AR Item No. 33 at 4; FD-AR Item No. 47 at 5. This ambiguous statement does not reasonably rise to the requirement that the Postal Service consider the "effect on the employees" at the office affected. It merely states the obvious options that the employees may be reassigned or leave the Postal Service. It does not indicate "what accommodations will be made for them." It does not seriously consider the actual alternatives available in the local area for the employees and the costs to the Postal Service of those alternatives.

The employee's own personal situation may dictate more precisely their choice of employment, if given reasonable and timely options to consider the alternatives. Surely, in taking the pulse of the community and its desires through questionnaires, the Postal Service is under at least an equal obligation to consider the views of its own employees and to take their views into consideration, especially where that obligation is expressed with equal force in the legislative directive. There is no showing in this record that the Postal Service has considered the views of its employee in terms of the likely preference to work at another particular location or to leave the Postal Service.

The requirement to consider the effect on employees also impacts another requirement of section 404. That is the requirement to consider "the economic savings to the Postal Service resulting from such closing." The Postal Service's estimate of savings in this case is heavily impacted by the estimated savings in "Postmaster Salary

(EAS 53, no COLA) of \$15,350 and fringe benefits of 33 percent, or \$5,142. The Postmaster at Thayer retired in 1993 and has not been replaced. An OIC operates the Thayer Post Office. The Postal Service's documentation does not compare the supposed savings with the salary and benefits received by the OIC, nor does the Administrative Record attempt to either justify or explain the reason for not relying upon actual costs that will be eliminated to measure savings. Neither is there any indication of the potential positions that may be filled by the employee at other postal facilities that might negate anticipated savings of salary and benefits. If greater consideration were given to the impact on the employees, the actual economic impact could be measured more accurately.

The economic savings analysis also suffers from other deficiencies. For instance, there is no discussion of the amount of Post Office Box rental revenue that will be lost, if any. The record is silent about the amount of revenue at Thayer, if any, from the rental of Post Office Boxes. If a box holder paying rent will now receive free rural carrier delivery service, it is reasonable to assume the lost rental income will offset some of the estimated savings from closing the Thayer Post Office.

The Commission recently admonished the Postal Service that additional factors need to be considered in the economic savings measurements. It stated,

One important omission from current analysis is the recognition of potentially offsetting costs. The costs of relocating or disposing of mail processing equipment are not considered. Collection box relocation costs are not considered. The costs of processing the resulting change-of-address forms and of forwarding mail are not considered. The costs of relocating Post Office Boxes may or may not be considered. (Citations omitted.)⁹

The Commission continued:

Rationalizing the Postal Service retail footprint is an ongoing program, and responsible Postal Service officials need accurate financial information to make informed decisions. The Commission

⁹ Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 10, 2010 at 60.

finds that the Postal Service should develop a more complete model of factors that impact costs and revenues when a retail facility is discontinued, and make it available to local officials responsible for evaluating the potential benefit of closing or consolidating facilities. *Id.*

If all Postal Service closing costs are accurately measured, and the revenues lost and the costs to the general public imposed on the community are taken into account and considered accurately, the economic savings might be negative. Without more information, the actual savings and even potential net costs are unknown. The failure to reasonably consider the economic savings is contrary to the provisions of section 404.

The deficiencies in the Thayer analyses warrant remand of the Final Decision for a fuller evaluation of the impact on the employee and the actual cost savings, if any, by termination of the OIC position at Thayer. Remand is also necessary to better account in a reasonable manner for any offsetting losses in revenue and other community expenses incurred by the closing of the Thayer Post Office.

VIII. CONCLUSION

For the reasons set forth above, the decision of the Postal Service to close the Thayer, Iowa Post Office should be remanded.

Respectfully Submitted,

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